S.B. CIVIL MISC. APPEAL No. 628/2006
(Sampat Singh & ors. Vs. Durga Lal & others)

DATED : 03.10.2006

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Himanshu Maheshwari for the appellants.

By way of this appeal against the award dated 13.01.2005 made by the Motor Accidents Claims Tribunal, Bhilwara in Claim Case No.26/2004 the claimant-appellants seek enhancement over the compensation amount of Rs. 5,57,800/- awarded by the Tribunal on account of accidental death of Rajesh Poswalia (about 36 years) son of the appellants Nos. 1 & 2, husband of the appellant No. 3 and father of the appellants Nos. 4 & 5.

On 30.09.2003 the deceased Rajesh Poswalia while riding his scooter near Mahila Ashram in the city of Bhilwara was hit by oncoming bus bearing registration No. RJ06 P 1544, driven by the non-applicant No. 1 Durga Lal, belonging to the non-applicant No. 2, Mahila Ashram School and insured with the non-applicant No. 3, The Oriental Insurance Co. Ltd.; the victim was crushed beneath the rear wheel of the bus and died on the spot due to the injuries sustained in the accident.

The present appellants claimed compensation stating the age of the deceased at 33 years and his earnings at

about Rs. 10,000/- per month in business and by serving in a factory .

The Tribunal found the accident causing fatal injuries to the deceased Rajesh Poswalia to have occurred for rash and negligent driving of the aforesaid bus and held the respondents liable for compensation. While taking up quantification of compensation, the Tribunal noticed the averments taken in the claim application about monthly income of the deceased at Rs. 10,000/- while working as Director in Poswalia Syntex Private Limited ('PSPL') and serving in another concern Chitra Synthetics Private Limited ('CSPL'). The Tribunal also noticed the statements of the wife of deceased about his getting salary of Rs. 7,000/- per month from Poswalia Syntex Private Limited and another salary of Rs. 6,600/- per month by part-time working in Chitra Synthetics Private Limited. The Tribunal further referred to the documents relating to the income of the deceased Ex. 7 to Ex. 17 and observed that the documents Ex. 11 to Ex. 14 were typed or computer printed copies not bearing signatures nor the person preparing them was produced in evidence. However, the Tribunal referred to the income tax returns Ex. 15 and Ex. 16 for the financial years 2000-2001 and 2001-2002 bearing signatures of the deceased showing his annual income respectively at Rs. 48,000/- and Rs. 49,862.90;

and also took note of the tax return Ex. 17 for the financial year 2002-2003 filed after his demise showing salary income at Rs. 61,200/- from salary and at Rs.4,398.75 from other sources but considered it proper to rely only upon the returns filed during his lifetime and estimated his annual income at Rs. 50,000/-. In view of the date of birth of the deceased stated in the tax return, the Tribunal took his age between 36 and 37 years and, therefore, applied a multiplier of 16 to assess pecuniary loss at Rs. 5,32,800/- after deducing one-third for the personal expenditure of the deceased. The Tribunal also allowed Rs. 5,000/- as funeral expenses and Rs.20,000/- towards non-pecuniary loss and, therefore, made an award in the sum of Rs.5,57,800/- in favour of the claimants and allowed them interest at the rate of 6% per annum from the date of filing of the claim application.

Learned counsel appearing for the appellants strenuously contended that the Tribunal has seriously erred in disbelieving and discarding the tax return showing annual income of the deceased at Rs. 65,598/-; that the said return Ex.17 could not have been ruled out of consideration merely because it was filed after his demise, particularly when there is no other evidence on record in rebuttal to the assertion of income of the deceased and the claimant was not even cross-examined on correctness of the return Ex. 17 filed by her.

Learned counsel submitted that the tax return Ex.17 is directly in conformity with the source of income asserted by the claimants and the loss ought to have been assessed on its basis. Learned counsel also submitted that the amount awarded by the Tribunal is not of just compensation particularly when appellants Nos.4 and 5 are minor daughters of the deceased and there are no sufficient means for future expenses towards their marriage and education. Learned counsel also submitted that the Tribunal has erred in awarding interest only at the rate of 6% per annum without considering the rate of interest prevalent at the time of making of the claim application.

Having given thoughtful consideration to the submissions made by the learned counsel and having examined the record and the award in its totality this Court is satisfied that this appeal remains bereft of substance and deserves to be dismissed.

The substratum of submissions for enhancement in this appeal is that the last income of the deceased as shown by the return Ex.17 ought to have been taken into consideration for assessing pecuniary loss. The submission is not well founded and the evidence produced on record has its own shortcomings.

The deceased has been shown earning salary as

Director of PSPL and getting another salary while working part-time in CSPL. Computation of income as produced on record and ruled out of consideration by the Tribunal Ex.11 to Ex.14 show that salary income of Rs.72,000/- was shown from PSPL for two years respectively 2000-2001 and 2001-2002. For the year 2002-2003 salary income from CSPL has been stated in the computation Ex.12 at Rs.19,200/- apart from salary from PSPL at Rs.72,000/-. It has not been shown as to from which date the deceased was working with CSPL and in what capacity and on what post? A certificate from CSPL Ex.10 has been produced on record stating salary of the deceased at the rate of Rs.6,600/- per month from 01.04.2003 to 30.09.2003 but neither the Director of the said concern has been produced in evidence nor any other corroborative evidence has been produced on record to believe such other source of income of the deceased. The said certificate Ex.10 does not state the post and work for which the deceased was paid the said salary.

So far the salary income from PSPL is concerned, the wife of the deceased has admitted in her cross-examination that the said company was their family concern being run from the time of her father-in-law. The claimants have merely produced unsigned computations of income Ex.11 to Ex.14 but have not produced the balance-sheets of the deceased

and have not shown the particulars of share holding of the deceased in the said PSPL and treatment of such share holding after his demise. Balance-sheets of the said private limited company, admitted to be a family concern, have also not been produced.

In the overall circumstances of the case and particularly for a part of income yielding assets having been left by the deceased and being available to the claimants, the assessment as made by the Tribunal taking his income at Rs.50,000/- per annum cannot be said to be inadequate or inappropriate; the submissions about discarding of return Ex.17, therefore, turn out to be lacking in substance and so also relevance so far reasonable assessment of pecuniary loss is concerned.

Moreover, in the overall circumstances of the case particularly when a sudden disproportionate increase in the income of the deceased was attempted to be shown in the return Ex.17 and when no other connecting and cogent documentary evidence was produced, the Tribunal cannot be said to be in error in not relying upon the said return Ex.17. The submission about want of cross-examination or evidence in rebuttal cannot be stretched to the level where even an arbitrary and inconsistent assertion of income of the

deceased on the part of the claimants be countenanced as such a procedure would be contrary to the requirements of awarding a just compensation. The submissions about requirements of minor daughters could also be accepted only to the extent of allowing just compensation as admissible in the case on the basis of material available on record and the overall circumstances. The Tribunal has allowed maximum multiplier of 16 to assess pecuniary loss at Rs.5,32,800/- and having examined the record in its totality, this Court is satisfied that the ultimate award made by the Tribunal remains not less than that of just compensation and cannot be said to be grossly inadequate so as to warrant interference in appeal.

The Tribunal has allowed reasonable compensation to the claimants and in the context of the award in question made in the year 2005, the rate of interest at 6% per annum cannot be said to be grossly inappropriate.

In the aforesaid view of the matter, there appears no scope for enhancement in the amount awarded by the Tribunal and there is no reasonable grounds to admit this appeal.

The appeal fails and is, therefore, dismissed summarily.

[DINESH MAHESHWARI], J.

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